

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

PRINCE MCCOY, SR.,

Plaintiff,

versus

EDWARD DELONE, *et al.*,

Defendants.

CIVIL ACTION NO. 1:20-CV-484

MEMORANDUM OPINION AND ORDER

Plaintiff Prince McCoy, Sr., an inmate confined at the Stiles Unit, proceeding *pro se* and *in forma pauperis*, brought this lawsuit pursuant to 42 U.S.C. § 1983.

Discussion

On March 21, 2023, the court granted the defendants' motions to dismiss and the action was dismissed for failing to state a claim upon which relief may be granted. Accordingly, the court entered a final judgment dismissing the action with prejudice. Plaintiff has filed a motion to alter or amend the judgment (#89). This memorandum considers such motion.

Analysis

FED. R. CIV. P. 59 provides in pertinent part the following:

(a)(1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or some of the issues - and to any party - as follows:

- (A) after a jury trial, for any of reason for which a new trial has heretofore been granted in an action at law in federal court; or
- (B) after a non jury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) *Further Action After a Nonjury Trial.* After a nonjury trial the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(e) **Motion to Alter or Amend Judgment.** A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Since plaintiff's motion was filed within 28 days from the date of the judgment, the motion is properly considered under Rule 59. Further, plaintiff clarifies in his motion that he does not seek relief from the judgment under Federal Rule of Civil Procedure 60.

Plaintiff attempts to relitigate his claims of deliberate indifference and requests that the court render a new judgment which allows the suit to proceed to trial. Plaintiff, however, has offered no new or different facts or legal arguments. After careful consideration of plaintiff's motion to alter or amend judgment, the court is of the opinion that plaintiff's motion fails to set forth a meritorious ground warranting relief from the judgment. Accordingly, plaintiff's motion should be denied.

ORDER

For the reasons set forth above, plaintiff's motion to alter or amend judgment should be denied. It is

ORDERED that plaintiff's motion to alter or amend judgment (#89) is **DENIED**.

SIGNED at Beaumont, Texas, this 7th day of March, 2024.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE